

Attorney Docket No.: SJ-0015
Inventors: Sorrentino and Schuetz
Serial No.: 09/866,866
Filing Date: May 29, 2001
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REMARKS

Claims 1-20 are pending in this application. The Examiner has made a restriction requirement under 35 U.S.C. §121 as follows:

Group I claims 1,2, 5-9 and 18-20 drawn to a method of identifying a stem cell or quantifying BCRP expression using antibodies that bind to BCRP classified in class 435, subclass 7.1;

Group II, claims 1,3,5-9 and 18-20 drawn to a method of identifying a stem cell or quantifying BCRP expression using nucleic acid probes to BCRP or other cell surface markers;

Group III, claims 1 and 4 drawn to a method of identifying a stem cell comprising detecting the BCRP expression by measuring the pumping activity of the cell. Classified in class 435, subclass 6;

Group IV ,claims 10-13 drawn to a method for isolating a cell that expresses BCRP, classified in class 435, subclass 7.1;

Group V, claims 14 and 15 drawn to an isolated and enriched stem cell population classified in class 435 subclass 325; and

Group VI, claims 16 and 17 drawn to antibodies that recognize the extracellular portion of a BCRP, classified in class 530, subclass 387.1.

The Examiner suggests that the inventions of Groups II through IV and I are unrelated. The Examiner suggests that groups I-IV are drawn to different methods of identifying cells and isolating

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cells. The Examiner further suggests that each of the differs in the nature of the assay, in the agents used in the process, and in the method steps.

The Examiner suggests that the inventions of Groups I, IV and VI could be related, as product and process of use. The Examiner suggests that the antibody of group VI could be used in a different process such as for identifying a cell or isolating a cell population, and further suggests that the methods could be practiced with materially different products.

The Examiner suggests that the inventions of Groups VI and V are unrelated. The Examiner suggests that Groups V and VI are drawn to different products, i.e. stem cells and antibodies. The different products are suggested to be distinct in chemical structure and function, as well as modes of operation when used as therapeutic and diagnostic agents.

The Examiner suggests that the inventions of Groups V and IV are related as process of making and product made. The Examiner suggests that the process of group IV could be used to isolate other types of cells, such as leukemia cells; and that the stem cells could be obtained by other methods such as stem cell cultivation. Applicants respectfully traverse this restriction requirement.

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MPEP §803 is quite clear; for a proper restriction requirement, it must be shown (1) that the inventions are independent or distinct AND (2) that there would be a serious burden on the Examiner if the restriction is not required. MPEP 802.01 defines "distinct" to mean that the "two or more subjects as disclosed are related, for example, as combination and part (subcombination) thereof, process and apparatus for its practice, process and product made there, etc., but are capable of separate manufacture, use, or sale, as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER."

All of the claims relate to the identification of stem cells using antibodies that bind to BCRP. Accordingly, each of the claims contain the components for use in the same endpoint, namely identification of a stem cell. Thus, Applicants respectfully disagree that the Groups set forth by the Examiner are distinct as being novel and unobvious over each other, as required by MPEP § 802.01.

Further, a search of literature relating to identification of stem cells would clearly reveal art relating to all of these Groups. Thus, the inclusion of all of the Groups in this application would not be overly burdensome to the Examiner.

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Accordingly, the instant Restriction Requirement meets neither of the criteria as set forth by MPEP §803 to be proper.

However, in an earnest effort to be completely responsive, Applicants hereby elect to prosecute Group VI claims 16 and 17, with traverse. Applicants believe that this response satisfies the requirements of the instant Restriction Requirement.

Respectfully submitted,

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